



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA-HQ-RCRA-2011-1014, FRL-9646-4]

RIN 2050-AG68

Revision to the Export Provisions of the Cathode Ray Tube (CRT) Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to revise certain export provisions of the cathode ray tube (CRT) final rule published on July 28, 2006 (71 FR 42928). The proposed revisions will allow the Agency to better track exports of CRTs for reuse and recycling. Additionally, EPA would gather more information on shipments of CRTs that are sent for reuse.

DATES: Comments must be received on or before [Insert date 60 days after publication in the Federal Register]

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA- 2011-1014 by one of the following methods:

www.regulations.gov: Follow the on-line instructions for submitting comments.

Email: Comments may be sent by electronic mail (email) to RCRA-docket@epa.gov, Attention Docket ID No. EPA-HQ-RCRA- 2011-1014.

Fax: Fax comments to: 202-566-9744, Attention Docket ID No. EPA-HQ-RCRA-2011-1014.

Mail: Send comments to: OSWER Docket, EPA Docket Center, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington D.C. 20460, Attention Docket ID No. EPA-HQ-RCRA- 2011-1014. Please include two copies of your comments. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., Washington D.C. 20503.

Hand delivery: Deliver two copies of your comments to: Environmental Protection Agency, EPA Docket Center, Room 3334, 1301 Constitution Avenue, NW, Washington D.C., Attention Docket ID No. EPA-HQ-RCRA- 2011-1014. Such deliveries are only accepted during the docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA- HQ-RCRA-2011-1014. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the OSWER Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the OSWER Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Marilyn Goode, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC 20460, (703) 308-8800, (goode.marilyn@epa.gov).

SUPPLEMENTARY INFORMATION:

Does this Action Apply to Me?

Entities potentially affected by today's action include all persons who export used cathode ray tubes (CRTs) and CRT glass for reuse or recycling. This action does not affect households or conditionally exempt small quantity generators (CESQGs). Annual costs to CRT exporters and EPA for the reporting and recordkeeping requirements range from \$7,300 to \$11,500 per year.

More detailed information on the potentially affected entities, industries, and industrial materials, as well as the economic impacts of this proposed rule, is presented in Section VIII of this preamble and in the Regulatory Impact Analysis available in the docket for this proposal.

What to Consider When Preparing Comments for EPA.

Submitting CBI. Do not submit this information to EPA through www.regulations.gov or email.

Clearly mark all information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR Part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- Follow directions. The Agency may ask for commenters to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If estimating burden or costs, explain methods used to arrive at the estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate any concerns and suggest alternatives.
- Make sure to submit comments by the comment period deadline identified above.

Preamble Outline

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I. Statutory Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S. C. 3007, 6912(a), 6921, 6922, 6924, 6926, 6927, and 6938.

II. List of Abbreviations and Acronyms

CRT – Cathode Ray Tube

CFR – Code of Federal Regulations

EPA – Environmental Protection Agency

RCRA – Resource Conservation and Recovery Act

RIA – Regulatory Impact Analysis

III. What is the intent of this proposal?

Today's proposal would revise the conditional exclusions from the Resource Conservation and Recovery Act (RCRA) regulations that apply to persons who export cathode ray tubes (CRTs) for reuse or recycling. The existing requirements were first promulgated on July 28, 2006 (71 FR 42928). Since promulgation of these requirements, the Agency has realized the necessity of obtaining additional information on the export of this class of used electronics to better ensure their proper management. This notice is intended to propose changes to accomplish that goal.

IV. What is the scope of this proposal?

Today's proposal would affect only the export provisions of the CRT rule, and would not affect any requirements applicable to the domestic management of used CRTs. In this notice, EPA is proposing to add a definition of "CRT exporter" to the CRT rule. This proposed definition is consistent with the intent of the original CRT rule, which was to ensure that EPA received proper notification of all shipments of CRTs exported for reuse or recycling. We are also proposing to revise the notifications that must be submitted to EPA when CRTs are exported for reuse or recycling, and to require annual reports from exporters of CRTs for recycling. These proposed changes are described in section VI of this preamble. EPA is seeking comment only on the changes proposed today, and is not reopening any other part of the rule for comment.

V. Background

The Agency promulgated the CRT rule on July 28, 2006 (71 FR 42928). In that rule, EPA amended its regulations under RCRA to streamline the management requirements for used CRTs in an effort to encourage recycling and reuse of these materials rather than landfilling or possible incineration. The scope of the rule encompassed both used, intact CRTs and used, broken CRTs (i.e., glass that has been removed from its housing or casing with its vacuum released). Specifically, under 40 CFR 261.39, these materials are excluded from the definition of solid waste if certain conditions are met, including: (1) used CRTs (intact or broken) sent for reuse and recycling are subject to the speculative accumulation requirements of 40 CFR 261.1(c)(8); (2) used, broken CRTs and CRT glass processors are subject to packaging and labeling requirements; and (3) CRT glass processors may not use temperatures high enough to

volatilize lead. Persons who send CRTs for disposal are not eligible for the exclusion at 40 CFR 261.39, and may be required to handle their CRTs as hazardous waste from the point of generation, including the requirement to file a hazardous waste export notice under 40 CFR Part 262 and the requirement to send the CRTs to a Subtitle C landfill.

In addition to these domestic requirements, the CRT rule also contains requirements at 40 CFR 261.39(a)(5) for used CRTs (intact or broken) exported for recycling. In order for these CRTs to be excluded from the definition of solid waste, the exporter must meet certain conditions. In particular, exporters of used CRTs for recycling must notify EPA of an intended shipment 60 days before the shipment occurs. Notifications may cover exports extending over a 12-month or shorter period. The notification must include contact information about the exporter, the recycler, and an alternate recycler, as well as a description of the manner in which the CRTs will be recycled, frequency and rate of export, means of transport, total quantity of CRTs to be shipped, and information about which transit countries the shipments will pass through.

When EPA receives this information, it notifies the receiving country and any transit countries. When the receiving country consents in writing to receive the CRTs, EPA forwards an Acknowledgement of Consent (AOC) to the exporter. The exporter may not ship the CRTs until he receives the AOC. If the receiving country does not consent or withdraws a prior consent, EPA will notify the exporter in writing, and the exporter may not allow any shipments or further shipments to proceed. Exporters must keep copies of notifications and AOCs for three years following receipt of the consent. Consent is not required from transit countries, but EPA notifies the exporter of any responses from these countries. Under 40 CFR 261.39(c), processed glass (i.e., glass that has been sorted or otherwise managed pursuant to the definition of “CRT processing” in 40 CFR 260.10) is subject only to the speculative accumulation requirements and

exporters of such materials are not subject to the export notice requirements of 40 CFR 261.39(a)(5).

With respect to used intact CRTs that are exported for reuse, 40 CFR 261.41 requires exporters to submit a one-time notification to EPA with contact information and a statement that they are exporting the CRTs for reuse. They must keep copies of normal business records demonstrating that each shipment will be reused. Records must be retained for three years from the date of export. Examples of normal business records include contracts, invoices, shipping documents, and other documents that identify the planned disposition of the materials.

Since promulgation of the CRT rule in 2006, exports of CRTs, whether for reuse or recycling, have continued. As EPA implemented the rule, it became apparent that additional information is needed from the CRT exporter to better understand the flow of exported CRTs in order to ensure better management of these materials. To address this issue, EPA is today proposing certain changes to the CRT rule, which are explained in section VI below.

VI. Proposed changes to the CRT rule

A. Definition of “CRT Exporter”

In the preamble to the final CRT rule, the Agency stated that “persons taking advantage of the exclusion that fail to meet one or more of its conditions may be subject to enforcement action and the CRTs may be considered to be hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA Section 3008(a) for all violations of the hazardous waste requirements occurring from the time a decision was made to recycle or dispose of the CRTs, through the time they are finally disposed of or reclaimed. EPA believes that this approach, which treats CRTs exhibiting a hazardous waste characteristic that do not

conform to the conditions of the exclusion as hazardous waste from their point of generation, provides all handlers with an incentive to handle the CRTs consistent with the conditions. It also encourages each person to take appropriate steps to ensure that CRTs are safely handled and legitimately reused or recycled by others in the management chain” (71 FR 42928 at 42943).

When used CRTs are exported for recycling or reuse, there may be several persons involved from the time that a decision is made to export these materials up to the time that the actual export occurs. The trade in used electronics can take place along a chain of businesses that collect, refurbish, dismantle, recycle, and reprocess used electronic products and their components. For example, a state (e.g., Texas or Wisconsin) may contract with recycling facilities to collect and recycle used electronics, including used CRTs. The recycling facilities may separate out equipment that can be reused, while unusable equipment is disassembled, sorted, and shredded. The reusable equipment may be sold or donated domestically or exported, sometimes through a broker. If recycling occurs, various component parts may be sent to subcontractors for further processing and returned to the manufacturing stream. Some of the processing (e.g., circuit boards, plastics) is performed abroad. For example, CRT glass may be cleaned and sorted in Mexico and then sent to India where it is made back into new CRTs.

If an exporter of used CRTs for recycling did not fulfill the export notice provisions of the CRT rule by notifying EPA, the receiving country would not receive notice that these materials were entering the country, and would be unable to provide consent. Similarly, if an exporter of used, intact CRTs filed a one-time reuse notice, but the CRTs were not functional and were subsequently recycled or even disposed, then EPA might rely on this mischaracterization without giving the receiving country the opportunity to consent to the shipments. In both of these situations, the competent authorities in the receiving countries would find it difficult to determine

whether the imported CRTs were properly managed. Under the current EPA interpretation, intermediaries who participated in arranging for the CRT exports, as well as the actual entities that sent the CRT exports, may be liable under RCRA for exporting hazardous waste in violation of hazardous waste export requirements if they fail to fulfill the notice requirements, among other conditions, of the CRT rule.

To eliminate any potential confusion over who is responsible for fulfilling CRT exporter duties, including submitting the export notices required under 40 CFR 261.39(a)(5)(for CRTs exported for recycling) and 40 CFR 261.41(for CRTs exported for reuse), the Agency is today proposing to add a definition of “CRT exporter” to 40 CFR 260.10. The proposed definition states that a CRT exporter is “any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.” The reference to “any intermediary” is modeled on the definition of “primary exporter” of hazardous waste in 40 CFR 260.10. As described above, there may be multiple parties who participate in deciding whether CRTs will be exported for recycling or reuse, and in arranging for the export of these materials. To avoid duplicative submissions, the Agency expects only one person to perform the exporter duties under 40 CFR 261.39(a)(5) and 40 CFR 261.41 (notifications to EPA, recordkeeping, and the annual reports that are proposed today and described below in this section of the preamble). However, all persons are jointly and severally liable for failing to comply with the exporter requirements. In other words, EPA has the authority to enforce the CRT rule export regulations against all persons associated with the export who meet the definition of “CRT exporter.” To avoid duplicative submittals, all relevant persons should assign these exporter responsibilities among themselves.

This procedure is similar to the situation where several parties meet the RCRA definition of “generator” (see 45 FR 72024, 72026, October 30, 1980).

We are also proposing that the CRT exporter and any intermediary arranging for the export must be in the United States, because foreign-based entities add to the possibility of confusion over fulfilling the export responsibilities, and it is more difficult to establish EPA jurisdiction over such persons.

EPA emphasizes that this proposed definition is consistent with the intent of the CRT rule. The Agency requests comment on any alternative regulatory changes which might better accomplish that intent.

B. Proposed changes to the notification required for used CRTs sent for recycling

The conditional exclusion in 40 CFR 261.39(a)(5) require exporters to submit a notice to EPA when exporting used CRTs for recycling. EPA then forwards the notice to the receiving country to obtain the consent of that country. The notice submitted to EPA must contain, among other items of information, the estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported. The notice must also contain the estimated total quantity of CRTs (specified in kilograms) that the exporter expects to ship during the following 12 months or lesser period. However, there is currently no requirement to subsequently report the quantity of CRTs that were actually exported during the time period specified in the notice. Without this information, the Agency is unable to determine the actual quantity of CRTs that are exported in a given year, either by a particular exporter or in total. The notification requirements for exporters of hazardous waste under 40 CFR 262 Subparts E and H, for exporters of spent lead-acid batteries under 40 CFR 266.80(a)(6), and for exporters of

universal waste under 40 CFR 273.20 or 273.40 all include a requirement to submit annual reports documenting the actual quantities of such materials that were exported. By reviewing annual reports, EPA can compare the amount of material that was actually exported to the estimates that were submitted earlier by these exporters when they provided the initial notification sent to the receiving country.

Today the Agency is proposing to add a requirement (40 CFR 261.39(a)(5)(x)) to require annual reports from exporters of used CRTs sent for recycling. In general, these reports would provide EPA with more accurate information on the total quantity of CRTs exported for recycling during the calendar year, and would also help determine whether CRTs exported for recycling are handled as commodities and not discarded. Additionally, EPA would be able to analyze shipments from specific exporters by comparing actual shipments in the annual report against proposed shipments in the export notice to ensure that the shipments occurred under the terms approved by the receiving country. Finally, these reports would enable EPA to provide receiving countries with information that may assist them in determining the quantity of CRTs that were received in a particular country for recycling.

Under today's proposal, the exporter must provide, no later than March 1 of each year, a report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all CRTs exported for recycling during the previous calendar year. Such reports must also include the name, EPA ID number (if applicable), mailing and site address of the CRT exporter, the calendar year covered by the report, and a certification signed by the exporter which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately

responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.” Under today’s proposal, the annual reports would be submitted to the same EPA office to which the original notices were sent. Exporters would be required to keep copies of annual reports for a period of at least three years from the due date of the report.

The Agency solicits comment on whether requiring such a report is sufficient to determine the actual quantity of CRTs that are exported in a given year. We also request comment on whether additional information is needed to accomplish this goal, and on whether the goal could be accomplished with less information, or in some other manner than an annual report.

EPA is today proposing one other change to the notice required for CRTs exported for recycling. The current notice (40 CFR 261.39(a)(5)(i)(F)) requires the exporter to state the name and address of the recycler and any alternate recycler. Because CRTs are sometimes exported to more than one recycler in the receiving country, we are proposing to replace this language with a requirement that the exporter state the name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers. In this way, EPA will be able to provide the receiving country with the most accurate information available about the ultimate fate of the CRTs when they reach that country.

C. Proposed changes to the notification required for used, intact CRTs exported for reuse.

Currently, exporters who send used CRTs for reuse must submit a one-time notice with certain information under 40 CFR 261.41. The notice must be sent to the Regional

Administrator. (The regulatory language does not specify which Regional Administrator, but it was the Agency's intent that the notice be sent to the Region from which the export takes place.) The notice must include a statement that the notifier plans to export used, intact CRTs for reuse. The notice must also include the notifier's name, address, and EPA ID number (if applicable), and the name and phone number of a contact person. Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

Since promulgation of this requirement, the Agency has become aware that some CRTs allegedly exported for reuse are actually recycled in the receiving country, sometimes under unsafe conditions. Failure to file the notice required for CRTs sent for recycling deprives the Agency of its ability to notify the receiving country about the CRTs to be imported into that country and obtain its consent. In order to require exporters to submit more complete information about the purported reuse of the exported CRTs over a specific period of time, we are proposing to add items to the reuse notice at 40 CFR 261.41 that are modeled on those required in the notice for CRTs exported for recycling. In addition, today's proposal would replace the one-time notice provision with a requirement that the notice be submitted periodically, to cover exports for reuse expected over a twelve month or lesser period. EPA believes that this additional information in the notice for reuse would greatly improve tracking, and thus better management, of these CRTS that are claimed to be exported for reuse.

Thus, under today's proposal, CRT exporters who export used, intact CRTs for reuse would be required to send a notification to EPA that would cover export activities extending over a twelve (12) month or lesser period. This notice would be sent to the same EPA office that

receives notices for CRTs exported for recycling (the Office of Enforcement and Compliance Assurance). The notification would be in writing, signed by the exporter, and would have to contain:

- the name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs;
- the estimated frequency or rate at which the CRTs would be exported and the period of time over which they would be exported;
- the estimated total quantity of CRTs specified in kilograms;
- all points of entry to and departure from each transit country through which the CRTs would pass;
- a description of the approximate length of time the CRTs would remain in each country and the nature of their handling while there;
- a description of the means by which each shipment of the CRTs would be transported (e.g., mode of transportation vehicle, such as air, highway, rail, water, etc.), as well as the type(s) of container (drums, boxes, tanks, etc.);
- the name and address of the ultimate destination facility or facilities where the CRTs will be reused and the estimated quantity of CRTs to be sent to each facility, as well as the name of any alternate destination facility;
- a description of the manner in which the CRTs will be reused in the country that will be receiving the CRTs; and
- a certification signed by the exporter which states: "I certify under penalty of law that the CRTs described in this notice are fully functioning or capable of being functional after refurbishment. I certify under penalty of law that I have personally examined and am

familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

Because of the additional items proposed for the reuse notice, the Agency believes it is appropriate to extend the coverage of this notice to a specified period of time, i.e., a twelve-month or lesser period. This time period is preferable to the one-time notice previously required because it ensures that the necessary information in the notice is more accurate and current.

The Agency solicits comment on whether the proposed notice could effectively contain fewer items of information, or whether the goal could be accomplished in some other manner. In addition, the Agency requests comment on whether the proposed notice should be sent to the Regional Administrator (as is the case with 40 CFR 261.41) or to EPA Headquarters, where notices for CRTs exported for recycling are currently sent. The Agency believes that sending both types of notices to EPA Headquarters would facilitate retention and effective tracking of such notices, and will also be easier for those exporters who are required to submit notices for both reuse and recycling. However, we solicit comment on whether there are benefits in sending these notices to the EPA Regions.

The Agency also solicits comment on whether to require exporters of CRTs for reuse to accompany all shipments of such CRTs with copies of the notice submitted pursuant to 40 CFR 261.41. If such a requirement were finalized, the Agency would require such exporters to submit a complete notification to EPA before the initial shipment is intended to be shipped off-site (e.g.,

60 days before the planned shipment), so that the exporter would have time to submit a copy of the completed notice with the shipment. In this way, if officials of U.S. Customs examined a shipment of used CRTs exported for reuse, they would be able to quickly obtain more information from the exporter or from EPA, if necessary. The Agency solicits comment on the benefits of such a requirement and whether such benefits would outweigh the costs to the exporter.

The Agency notes that 40 CFR 261.41(b) requires persons who export CRTs for reuse to keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. The documentation must be retained for a period of at least three years from the date the CRTs were exported. EPA solicits comment on whether to require specific types of documents to be retained, such as contracts, invoices, and/or shipping documents, and, if so, which documents must be retained. We also solicit comment on whether to require persons who export CRTs for reuse to provide a third-party translation of the documents into English if the documents are written in a language other than English and if EPA requests such a translation. In addition, we request comment on whether to require persons who export CRTs for reuse to provide contact information on an alternative destination facility for used, intact CRTs that are damaged in transit, or whether to require such persons to send the damaged CRTs back to the CRT exporter

Finally, the Agency also solicits comment on whether to add a requirement to submit annual reports for exporters of used, intact CRTs for reuse. These reports could be identical to the reports proposed for CRTs exported for recycling. They would enable EPA to learn the actual number of CRTs exported for reuse, which may be different from the number estimated in

the original notice required under 40 CFR 261.41. EPA requests comment on whether this information would provide benefits which might outweigh the costs of submitting the report.

D. Other Issues

1. “Bare” CRTs

The current definition of “used, intact CRT” in 40 CFR 260.10 means a CRT whose vacuum has not been released. As we stated in the preamble to the 2006 final rule (71 FR 42942), this definition would encompass intact CRTs that are removed from the monitor with the vacuum still intact, even though the plastic housing or casing has been broken and removed. In that preamble, EPA stated that these materials resembled products more than wastes, and therefore should not be considered solid wastes unless disposed. If such “bare” CRTs are exported for reuse (i.e., placement into CRT monitors), they would not be subject to the export requirements of 40 CFR 261.39(a)(5), but would instead be subject to the reuse requirements of proposed 40 CFR 261.41. However, if exported for recycling, (presumably for glass or lead recovery), they would not be eligible for the exclusion in 40 CFR 261.39(c) for processed glass sent to a lead smelter or glass manufacturer because the CRTs have not been processed pursuant to the definition of “CRT processing” in 40 CFR 260.10. EPA solicits comment on whether “bare” CRTs removed from the monitor whose vacuum has not been released are likely to be exported for recycling rather than reuse and whether the regulation needs to be modified to reflect this situation.

VII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to the HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than the existing federal requirements.¹ RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 FR 271.1(i)). Therefore, authorized states are not required to adopt federal

¹ EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes state programs.

regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations or that narrow the scope of the RCRA program.

B. Effect on State Authorization

Because of the federal government's special role in matters of foreign policy, EPA does not authorize States to administer federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States would not receive authorization to administer the Federal government's export functions in this proposal, State programs would still be required to adopt those provisions in today's rule that are more stringent than existing federal requirements to maintain their equivalency with the federal program. Today's proposal contains amendments to 40 CFR Part 261.39 and 40 CFR Part 261.41 which would be more stringent if finalized. Therefore, states that have adopted these provisions, as well as states that have added CRTs to their universal waste programs under 40 CFR Part 273, would be required to adopt these amendments. In addition, EPA strongly encourages States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E and H, the import/export manifest and OECD movement document related requirements in §263.10(d), the import manifest and OECD movement document submittal requirements in §§ 264.12(a)(2), 264.71, 265.12(a)(2), and 265.71, or the management provisions for spent lead-acid batteries

(SLABs) in 40 CFR part 266, subpart G. When a State adopts the export provisions in this rule, care should be taken not to replace Federal or international references with State terms.

VIII. Administrative Requirements for This Rulemaking

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the Economic Impacts Assessment for Proposed Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule. A copy of the analysis is available in the docket for this action. Annual costs to CRT exporters and EPA for the reporting and recordkeeping requirements range from \$7,300 to \$11,500 per year.

B. Paperwork Reduction Act (Information Collection Request)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2455.01.

EPA, under existing 40 CFR 261.39(a)(5)(F) and 40 CFR 261.41, is proposing to revise the notifications that must be submitted to EPA when CRTs are exported for reuse or recycling. EPA, under new 261.39(a)(5)(x), is also proposing to add a requirement that exporters of CRTs

for recycling must submit an annual report to EPA. The purpose of these proposed revisions is to address certain implementation concerns with the current export provisions of the CRT rule. The current notice for CRTs exported for recycling requires the exporter to state the name and address of the recycler and any alternate recycler. Because CRTs are sometimes exported to more than one recycler in the receiving country, EPA is proposing to require that the exporter state the name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers.

EPA is proposing to expand the current reuse notice and model the notice on that required for CRTs exported for recycling. Instead of a one-time notice, EPA is proposing to require that reuse notices be submitted to cover a twelve month or shorter period. EPA is also proposing to add additional items of information to the notice, including contact information about the exporter and the destination facility, the frequency or rate at which the CRTs would be exported, the quantity of CRTs, transport information, and a description of the manner in which the CRTs will be reused in the receiving country. Furthermore, EPA is proposing to require that the exporter sign a certification that the CRTs are fully functioning or capable of being functional after refurbishment. EPA believes that the proposed expanded notice will help the Agency determine whether the exported CRTs have been handled as products that are actually reused in the receiving country.

Finally, EPA is proposing to add a requirement that exporters of CRTs for recycling submit an annual report documenting the actual numbers of CRTs exported during the previous calendar year. This number may differ from the estimate submitted in the original notice. This information will help ensure that the shipments occurred under the terms approved by the receiving country, and would enable EPA to provide receiving countries with information that

may help them to determine the quantity of CRTs that were received in a particular country for recycling.

EPA has carefully considered the burden imposed upon the regulated community by the proposed information collection requirements. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum information collection requirements specified under the proposed rule are not met, neither the facilities nor EPA can ensure that CRTs are managed in compliance with the regulations.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule ranges from 229 to 259 hours, and the annual respondent cost for the new paperwork requirements is approximately \$17,600 to \$19,700. The estimated annual hourly burden ranges from 0.15 to 3.5 hours per response for the 138 respondents. The estimated total annual burden to EPA for administering the rule (e.g., receive, review, and process information required under the proposed rule) ranges from 55 to 97 hours, with a cost of approximately \$2700 to \$4700. Burden is defined at 5 CFR 1320.3(b).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA-HQ-RCRA-2011-1014. Submit any comments related to the ICR for this proposed rule to EPA

and OMB. See ADDRESSES section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [Insert date of publication in the Federal Register], a comment to OMB is best assured of having its full effect if OMB receives it by [Insert date 30 days after publication in the Federal Register]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201;" (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are 138 individual CRT exporters. We have determined that the annual compliance cost of the rule, as a percentage of annual sales, is less than 0.1 percent. Based on the above, the Agency has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Because these direct costs are well below the \$100 million annual direct cost threshold, this proposed rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA). This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations because of the Federal government's special role in matters of foreign policy.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Specifically, this proposed rule does not have Federalism implications because the State and local governments do not administer the export and import requirements under RCRA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this rule. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States. This proposed rule is intended to improve regulatory efficiency and increase accountability among all parties associated with the export of used CRTs whether sent for recycling and reuse, and does not directly affect the level of protection provided to human health or the environment in the United States.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As defined in Executive Order 13211, a “significant energy action” is any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1) is a significant regulatory action under Executive Order 12866 or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by OMB as a significant energy action. This proposed rule does not involve the supply, distribution, or use of energy and is not a significant regulatory action under Executive Order 12866. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Environmental Justice

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment in the United States. Rather, this proposed rule is intended to improve regulatory efficiency and increase accountability among all parties associated with the export of used CRTs, whether for recycling or reuse.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Solid waste, Recycling.

RIN 2050-AG68: Revision to the Export Provisions of the Cathode Ray Tube (CRT) Rule

Dated: March 2, 2012.

Lisa P. Jackson,

Administrator

For the reasons set out in the preamble, Parts 260 and 261 of title 40, Chapter I of the Code of Federal Regulations are proposed to be amended as follows:

PART 260 – HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S. C. 6905, 6912(a), 6921-6927, 6930, 6934, 6937, 6938, 6939, and 6974.

Subpart B – Definitions

2. Section 260.10 is amended by adding in alphabetical order the definition of “CRT exporter” to read as follows:

§260.10 Definitions

* * * * *

CRT exporter means any person in the United States who initiates a transaction to send used CRTs outside the United States territories for recycling or reuse, or any intermediary in the United States arranging for such export.

* * * * *

PART 261 – IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A – General

4. Section 261.39 is amended by revising paragraph (a)(5)(i)(F) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

(a) * * *

(5) * * *

(i) * * *

(F) The name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers.

* * *

(x) CRT exporters must file with EPA no later than March 1 of each year, a report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility

or facilities where the recycling occurs) of all CRTs exported during the previous calendar year.

Such reports must also include the following:

- (A) The name, EPA ID number (if applicable), and mailing and site address of the exporter;
- (B) The calendar year covered by the report;
- (C) A certification signed by the exporter which states:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.”

- (xi) Annual reports must be submitted to the office specified in paragraph (ii) of this section.

Exporters must keep copies of annual reports for a period of at least three years from the due date of the report.

* * * * *

- 5. Section 261.41 is amended by revising paragraph (a) to read as follows:

§261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

- (a) CRT exporters who export used, intact CRTs for reuse must send a notification to EPA.

This notification may cover export activities extending over a twelve (12) month or lesser

period. The notification must be in writing, signed by the exporter, and include the following information:

- (1) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.
- (2) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.
- (3) The estimated total quantity of CRTs specified in kilograms.
- (4) All points of entry to and departure from each transit country through which the CRTs will pass, a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.
- (5) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).
- (6) The name and address of the ultimate destination facility or facilities where the CRTs will be reused and the estimated quantity of CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities.
- (7) A description of the manner in which the CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the CRTs.
- (8) A certification signed by the exporter which states:

“I certify under penalty of law that the CRTs described in this notice are fully functioning or capable of being functional after refurbishment. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for

obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.”

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[FR Doc. 2012-6276 Filed 03/14/2012 at 8:45 am; Publication Date: 03/15/2012]